

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TIG INSURANCE COMPANY,

Civil Action No.: 07civ8250
ECF Case (JGK)

Plaintiff,

-against-

THE FAIRCHILD CORPORATION and NATIONAL
UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA,

**DECLARATION IN
OPPOSITION TO
DEFENDANT FAIRCHILD
CORPORATION'S MOTION
TO DISMISS OR STAY**

Defendants.

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KRISTIN V. GALLAGHER, being duly sworn, hereby declares as follows:

1. I am a member of the firm of Carroll, McNulty & Kull, L.L.C., attorneys for Plaintiff, TIG INSURANCE COMPANY ("TIG"), and as such I am fully familiar with the facts and circumstances set forth herein.

2. I submit this Declaration in opposition to Defendants' Motion to Dismiss or in the alternative, to stay the action sub judice based on the doctrine of abstention.¹

3. This is an action seeking declaratory relief against The Fairchild Corporation ("Fairchild") and one of its primary insurers, National Union Fire Insurance Company of Pittsburgh, PA ("National Union"), in relation to an underlying action captioned *Milacron, Inc., f/k/a Cincinnati Milacron v. The Fairchild Corporation and RHI Holdings, Inc.* (the "Milacron Action"), Case Number A0404162 in the Court of Common Pleas, Hamilton County, Ohio. A copy of the First Amended Complaint is annexed hereto as Exhibit "A".

¹ On or about December 10, 2007, The Fairchild Corporation moved to dismiss or, in the alternative, stay this action. On or about January 7, 2008, National Union Fire Insurance Company of Pittsburgh PA joined the motion.

4. By letter dated July 12, 2007, a decision in the Milacron Action was issued. A copy of said decision is annexed as Exhibit "B".

5. As a result of that decision, by correspondence dated July 24, 2007, Fairchild demanded that TIG contribute a pro rata portion of the Milacron Judgment under the TIG excess policies. A copy of the July 24, 2007 Letter and Allocation Charts is attached hereto as Exhibit "C".


6. By correspondence dated July 24, 2007, TIG disclaimed coverage based upon Fairchild's failure to demonstrate that the limits of all underlying insurance and other insurance had been completely and properly exhausted. A copy of the July 24, 2007 disclaimer is annexed as Exhibit "D".

7. On or about September 21, 2007, TIG commenced this action, seeking a declaration of its rights and obligations with respect to Fairchild pursuant to the TIG Excess Policies and the National Union Primary Policies as they relate to the Milacron Action. A copy of the Complaint is annexed as Exhibit "E".

8. Subsequent to the commencement of the present action, on or about September 27, 2007, Fairchild filed a second amended third party complaint in the Milacron Action, naming TIG as a third-party defendant, and seeking a declaration of its rights under the TIG Excess Policies as they relate to the Milacron Action (the "Ohio Action"). A copy of the Second Amended Third-Party Complaint is annexed hereto as Exhibit "F".

9. The Court is respectfully referred to the accompanying Memorandum of Law for the facts and arguments in opposition to Defendants' Motion.

Dated: New York, New York
January 9, 2008

By: 
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